Scoping Document

Devils Lake Emergency Outlet

Environmental Impact Statement

Volume I: Background and Issues

February 1999

U.S. Army Corps of Engineers
St. Paul District
190 Fifth Street East
St. Paul MN 55101-1638

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VOLUME II: WRITTEN COMMENTS ON DRAFT SCOPING DOCUMENT

1.0 INTRODUCTION

As directed by Congress, the U.S. Army Corps of Engineers, St. Paul District (Corps), is preparing an Environmental Impact Statement (EIS) under the terms of the National Environmental Policy Act (NEPA) for a proposed emergency outlet from Devils Lake to the Sheyenne River in North Dakota.

In 1993, in accordance with Public Law 102-377, the Corps initiated a feasibility study and EIS to address water management needs of the Devils Lake area. The study scope initially included lake stabilization, water quality, recreation, and the enhancement and conservation of fish and wildlife. However, due to the rapidly rising lake levels, the study focus to date has been primarily on flood damage reduction.

Since 1993, an integrated approach to flood damage reduction has been pursued by various Federal, State, Tribal, and local agencies in the basin in an attempt to address the rising lake levels and the damages that are being caused. This approach includes upper basin management to reduce the volume of water reaching Devils Lake, an emergency outlet from Devils Lake to the Sheyenne River to help remove excess water from Devils Lake, and infrastructure protection to provide protection as lake levels rise.

In 1997, Congress passed Public Law 105-18 and directed the Corps to conduct preconstruction engineering and design, and to prepare an EIS for the emergency outlet. The EIS will discuss potential measures to address the rising lake levels, including upper basin management, infrastructure protection, and the emergency outlet (see Section 3.0 of this Scoping Document). The EIS will make conclusions about the reasonableness and feasibility of these alternatives in general, and the impacts associated with them. The EIS will then focus on the impacts of constructing and operating an emergency outlet and describe the rationale for the selection of the outlet route and the effects of the emergency outlet.

Public Law 105-62, the 1998 Energy and Water Development Appropriations Act, states that any construction must be "technically sound, economically justified, environmentally acceptable and in compliance with the National Environmental Policy Act". In addition, it states that "no funds made available under this Act or any other Act...may be used...for stabilized lake levels through inlet controls, or...that would permit the transfer of water from the Missouri River Basin into Devils Lake".

This Scoping Document describes a part of the EIS process, called "scoping."

1.1 DEFINITION OF AN ENVIRONMENTAL IMPACT STATEMENT

An EIS is a written document required by NEPA to be prepared for "major federal actions significantly affecting the quality of the human environment." Major federal actions are defined in the regulations implementing NEPA as actions "with effects that may be major and which are potentially subject to Federal control and responsibility" (40 CFR 1508.18). An EIS describes the purpose and need for an action, any alternatives that were considered in detail (including no action), the nature of the environment to be affected, and the nature and significance

of the environmental effects of a proposed action and alternatives. Mitigation measures must also be described for any effects determined by the agency to be significant under the standards set in the regulations.

1.2 DEFINITION OF SCOPING

Scoping is a vital part of the NEPA process, and is one of the first steps undertaken when planning an EIS.

- It is an "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action" (40 CFR 1501.7).

- It provides agencies with a method to determine the scope of analysis in an EIS, meaning the nature of the actions, the alternatives, and the impacts to be analyzed.

- It helps agencies to "identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review" (40 CFR 1501.7).

- It involves Federal, State, and local agencies, affected Indian tribes, the proponent of an action, and other interested persons (40 CFR 1501.7).

- It is one of the 17 methods of reducing excess paperwork, and one of the 12 methods for reducing delay, as outlined in the regulations implementing NEPA (40 CFR 1500.4 and 1500.5).

Scoping for an EIS officially begins with publication of a Notice of Intent to Prepare an EIS in the Federal Register. This is the first public notice that an agency is intending to prepare an EIS; the Notice of Intent for the Devils Lake Emergency Outlet EIS was published on October 21, 1997.

No standard format for scoping exists. Agencies have wide discretion in conducting scoping, as long as they get the results needed to continue the NEPA process. The Corps chose to hold a series of meetings with other agencies and officials, the Spirit Lake Tribe, and with the public (Section 5.0 - Public Involvement Program). In addition, written comments were solicited through the Federal Register notice, announcements in local media, the Corps and the North Dakota State Water Commission (NDSWC) web pages, at each meeting, and in the draft Scoping Document.

1.3 PURPOSE AND NEED FOR THE PROJECT

Devils Lake has a long history of fluctuating lake levels. Since 1993, the lake has risen over 22 feet and is causing damages to or threatening the transportation system, infrastructure, and public and private property around the lake. The purpose of the proposed action is the reduction of flood damages and flood protection costs related to the rising lake levels in the flood-prone areas around Devils Lake.

1.4 HOW THIS SCOPING DOCUMENT WILL BE USED

For a complex project such as the Devils Lake Emergency Outlet EIS, it is important to define at the outset what specific environmental studies need to be reviewed or conducted before a decision is made. This document, based on oral and written input from Federal, State, and local agencies, the Spirit Lake Tribe, and other interested persons, describes the scope of actions, alternatives, and impacts to be studied in the Devils Lake Emergency Outlet EIS, and identifies the significant environmental issues that will be studied in detail, as well as those that are not significant or that have been covered elsewhere.

Because the Scoping Document is also a part of the public NEPA process for this project, public comments were solicited on the draft Scoping Document (June 1998). Comments received during the draft Scoping Document Public Comment period are addressed in Section 6.0 - Draft Scoping Document Review Comments - Summary and Responses, and are reproduced in Volume II of this document.

1.5 INPUT ANALYZED FOR THIS SCOPING DOCUMENT

Input analyzed for this Scoping Document came from three sources:

1. Meetings with Federal, State, local agencies, the Spirit Lake Tribe and other entities, including Canada.
2. A series of seven public meetings held in March 1998.
3. Written comments submitted by agencies, organizations, nations, and the interested public.

Section 5.0 - Public Involvement Program, includes a description of the meetings. Written comments received during the scoping meeting comment period were included as Volume II of the draft Scoping Document (June 1998).

Specific comments and questions were raised by participants at the series of seven public meetings. Most of these questions were either factual in general ("What is the proposed discharge rate for the outlet?") or related to specific situations faced by people in the Devils Lake area or downstream ("How will the proposal affect my property?"). In addition, many participants expressed opinions about various options, or beliefs about the viability of the project as a whole, or concerns about other projects they believed were related to this proposal (see Attachment A).

2.0 GEOGRAPHIC SCOPE OF ANALYSIS

The geographic scope of analysis for the environmental impacts of the proposed action and alternatives consists of the Devils Lake basin, the Sheyenne River downstream of the proposed outlet, and the Red River of the North downstream of the Sheyenne River to the Canadian border (Figure 1).

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RUST

Rust Environment & Infrastructure Inc.

FIGURE 1
PROJECT LOCATION

DEVILS LAKE EMERGENCY OUTLET
SCOPING DOCUMENT

FEBRUARY 1999

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3.0 SCOPE OF ALTERNATIVES TO BE ADDRESSED IN THE EIS

During previous studies that have been conducted over the last several years, a number of alternatives were investigated to reduce damages caused by rising lake levels. These included levees, zoning, control of drainage, raising upstream lakes, various outlet channel alignments, and water treatment methods. A number of these measures were dropped from further consideration for various reasons. The information from these previous studies will be summarized in the EIS.

Numerous comments at the public meetings and during the scoping meeting comment period concerned alternatives related to upper basin management and infrastructure protection. These include comment letters designated as 2, 3, 4, 10, 11, 12, 17, 18, 21, 24, 26 and N. Comments received are listed in Attachment B and were reproduced in Volume II of the draft Scoping Document (June 1998). The following measures will be evaluated in the EIS, and their potential effectiveness discussed. Detailed analyses and project design may result in changes in project features. Additional scoping may be conducted if there are substantial changes.

3.1 EMERGENCY OUTLET TO THE SHEYENNE RIVER

A number of routes and conveyance methods will be discussed. These include different locations within the lake system and Stump Lake. Incorporating Stump Lake into the design will be investigated as part of the alternative analysis. The purpose of the emergency outlet would be to remove excess water from Devils Lake. The proposed action is a buried pipeline from the West Bay along the Peterson Coulee alignment (Figure 2).

3.2 INFRASTRUCTURE PROTECTION

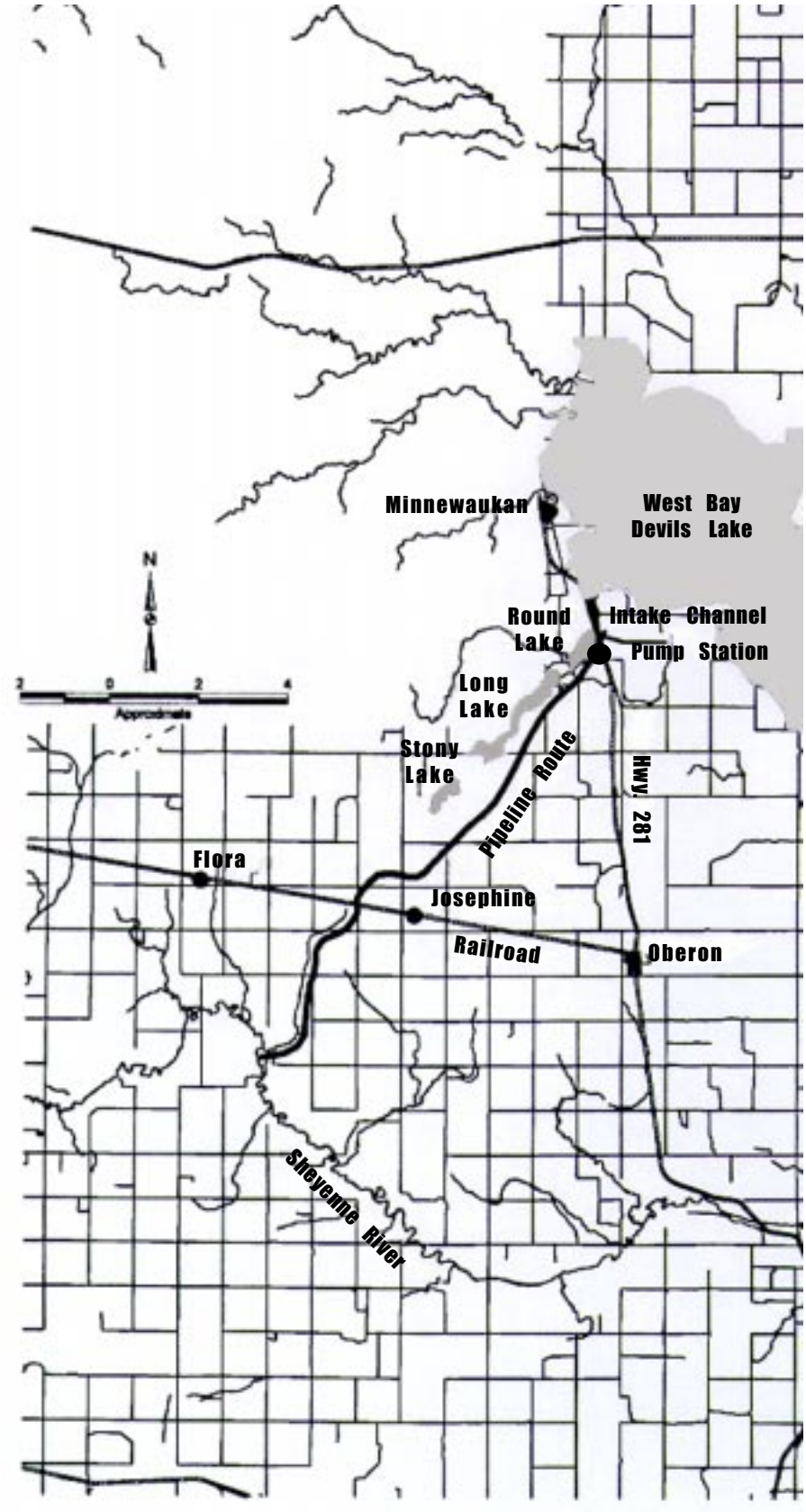
This includes road raises, levees, relocation, zoning, etc. The purpose of infrastructure protection is to provide protection as the lake level rises.

3.3 UPPER BASIN MANAGEMENT

This includes restoring wetlands, raising existing lakes, re-routing Channel A, closing illegal drains, expanding the Conservation Reserve Program, adopting minimum tillage, etc. The purpose of upper basin management is to reduce the volume of water reaching Devils Lake.

3.4 NO ACTION

In the case of this EIS, No Action is the same as the Future Without Project (i.e., without outlet) condition. This includes the continuation of infrastructure protection and upper basin management measures that are reasonably foreseeable within the period of analysis and within funding and institutional constraints.



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EARTH TECH

FIGURE 2
PROPOSED PETERSON COULEE OUTLET

DEVILS LAKE EMERGENCY OUTLET
SCOPING DOCUMENT

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3.5 COMBINATIONS OF THESE MEASURES

The above measures could be combined as follows: 1) emergency outlet and infrastructure protection; 2) emergency outlet and upper basin management; 3) infrastructure protection and upper basin management; 4) emergency outlet, infrastructure protection, and upper basin management.

4.0 SCOPE OF ISSUES TO BE ADDRESSED IN THE EIS

Prior to the public meetings held in March 1998, the Corps had conducted both internal and interagency meetings and discussions, and had identified 20 possible categories of environmental issues related to the Devils Lake Emergency Outlet project (identified as Issues A-T on Table 1). All of these issues are important, and many are required by law to be studied during the preparation of an EIS (for example, cultural resources, international treaties, and endangered species). However, an essential requirement of scoping under the NEPA is to determine which issues are crucial to a decision to construct an outlet or not, and therefore must be evaluated, and which are of lesser importance and can be simply summarized or dismissed in the EIS.

The Corps decided to ask for public assistance in prioritizing these previously identified issues during the public meetings held during 23-27 March 1998, and approximately 62% of the participants at the meetings submitted their suggestions on an "Issue Ranking Sheet" provided for that purpose. Table 1, *Ranking of Resource Issue Priorities from Public Scoping Meetings,* contains the public priorities for each identified issue category, along with an indication of which written comments discussed that issue category.

Many of these issues, such as cultural resources and relations with other states and nations, need to be addressed due to some form of legal requirement (law, Executive Order, regulation, treaty, or other agreement) and will be covered in the EIS to the extent necessary to ensure these legal requirements are fully met. Examples include the coordination required with the Spirit Lake Tribe, the Canadian government, and procedural coordination about any identified threatened or endangered species and cultural resources.

Based on the analysis of written and oral comments, issue ranking conducted at interagency and public meetings, the comments on the draft Scoping Document, and regulatory requirements, the Corps determined which issues will be evaluated and which will be summarized in the EIS.

4.1 KEY ISSUES IDENTIFIED

The following issues were identified by the Corps through input from public scoping meetings and agency correspondence as key to the decision whether to proceed with an outlet or not.

4.1.1 Downstream Water Quality (Issue B)

This issue includes questions about sulfates, total dissolved solids, mercury, and other water quality parameters in the Sheyenne and Red Rivers. It ranked first in the public numerical

TABLE 1: RANKING OF RESOURCE ISSUE PRIORITIES FROM PUBLIC SCOPING MEETINGS

Issue Name	Overall Priority	Valley City	Lisbon	Cooperstown	Ft. Totten	Devils Lake	Grand Forks	Fargo	Written Comment**
A. Water Quality in Devils Lake	11	15	12	10	4	4	4	12	
B. Downstream Water Quality	1	1	2	2	6	7	2	1	3, 6, 8, 17, 25, A, B, E ,F
C. Water Quantity in Devils Lake	3	11	7	5	1	1	3	9	3, 21, C
D. Downstream Water Quantity	2	3	1	1	7	10	1	2	3, 8, 28, A
E. Devils Lake Aquatic Resources	16	20	18	20	9	12	11	18	3, 13, 17
F. Downstream Aquatic Resources	12	5	10	12	16	15	7	6	3, 13, 17, 26
G. Downstream Erosion and Sedimentation	4	2	3	3	8	14	12	3	8, 17, 18, D
H. Groundwater	7	4	4	4	14	6	14	4	18
I. Water Users/Water Supply	8	7	6	8	12	8	6	5	21, D
J. Devils Lake Agriculture	9	17	15	13	2	2	5	15	L, N
K. Devils Lake Natural Resources*	17	19	17	16	13	13	18	19	17
L. Downstream Natural Resources*	13	8	7	7	20	18	15	11	
M. Downstream Agriculture	10	12	5	11	10	11	13	7	
N. Devils Lake Recreation	18	16	20	19	18	9	16	20	
O. Downstream Recreation	19	9	19	14	19	17	19	16	26
P. Cultural Resources*	20	18	16	18	17	20	20	17	
Q. Spirit Lake Tribe*	15	14	14	15	11	19	17	14	17, 18, 24
R. Other States and Nations*	14	13	13	17	15	16	9	13	I
S. Economic	5	10	11	9	3	3	8	10	3, 8, 9, 18, 23, 28, E, F, L, K
T. Operational	6	6	9	6	5	5	10	8	2, 3, 8, 17, D

Notes:

Overall issue priority, and issue priorities for each public meeting locality, were determined from the "Issue Ranking Sheets" distributed at each meeting and is a numerical ranking by the participants. Ranking system: 1 = Most Important, 20 = Least Important. Written comments relating to each identified issue are listed, whether submitted at a public meeting or in response to the Notice of Intent or some other request for scoping comments. Letters and comment sheets not specifically referenced here contained various information and opinions not directly related to the identification of environmental issues. All written comments were included in Volume II of the draft Scoping Document, and are identified by letter or number as in Attachment B to Volume I of this Scoping Document.

* Indicates issues that need be addressed in the EIS due to some form of legal requirement (law, Executive Order, regulation, treaty, or other agreement).

** Refers to written comments received during the public scoping meeting comment period which were included as Volume II of the draft Scoping Document, and are not reproduced in this Scoping Document.

rankings at the public scoping meetings, was in the top ten at all seven public meeting localities and agency meetings, and received the most written comments (nine) of any issue, including several from agencies. Several commenters also emphasized the potential effects on human health, livestock, and business losses of high sulfate concentrations; this aspect of Issue B is closely related to Issue I, Water Users/Water Supply.

4.1.2 Downstream Water Quantity (Issue D)

This issue includes downstream flooding both with and without storm events, effects on the operation of the fish hatchery at Lake Ashtabula, questions regarding specific water levels at specific locations on the Sheyenne and Red Rivers, and discussions of the application of flood modeling (including the Virtual Flood model) to impact predictions. It ranked second in the numerical rankings at the public scoping meetings was in the top ten at all seven public and agency meetings, and was the subject of four written comments.

4.1.3 Water Quantity in Devils Lake (Issue C)

This issue covers most aspects of the current flooding issue. It includes consideration of future flooding potential, damage to public and private lands and infrastructure, effects on businesses (including those related to recreation), and consideration of low water levels as well as the current high water levels. Effects on the upper Devils Lake basin should also be included here, according to three written comments. This issue was ranked third overall, and in the top ten at six of the seven public meetings.

4.1.4 Economic Issues (Issue S)

This issue includes questions about infrastructure impacts (such as sewers, roads, and levees), as well as specific issues around tax base, economic viability of businesses including farms, and the effects on agriculture and other businesses. It also includes treatment of cost-benefit and other standard economic analyses. This issue ranked fifth overall, and was in the top ten at six of the seven public meetings. It received the second highest number of written comments (eight), most of which suggested that a careful examination of costs and benefits of the project be undertaken in the EIS.

4.1.5 Water Users/Water Supply (Issue I)

This issue includes topics concerning irrigators, municipal and industrial water supply, water treatment facilities (capacity, potential need for upgrading and related costs), and issues affecting permitted dischargers, especially downstream. It was ranked eighth overall, and in the top ten at six of the seven public meeting localities. It received two written comments.

4.1.6 Downstream Natural Resources (Issue L)

This issue includes potential effects on designated special areas (such as scientific and natural areas, wetlands, wildlife areas, and forests) as well as any threatened or endangered species that

may occur in the geographic scope of analysis. This issue was ranked thirteenth overall, and was in the top ten at three of the seven public meeting localities and agency meetings. It received no written comments. This issue will be analyzed due to legal requirements related to Federal threatened and endangered species.

4.1.7 Other States and Nations (Issue R)

This issue includes topics such as conformity with the 1909 Boundary Waters Treaty with Canada and certain specific topics (such as biota transfer and the persistent questions about Garrison Diversion) of interest to the states of Minnesota and Missouri. This issue was ranked fourteenth overall, and was in the top ten at one of the seven public meeting localities. It received four written comments, three from states other than North Dakota. This issue will be analyzed due to legal requirements.

4.1.8 Spirit Lake Tribe (Issue Q)

This issue includes numerous legal topics, including a current lawsuit regarding the specific boundaries of the Spirit Lake Reservation, as well as the overall issue of sovereignty, the status of Tribal Trust resources, the nature and location of any cultural resources (including traditional cultural properties) that might be eligible for the National Register of Historic Places, economics, environmental justice, and impacts on groundwater under the reservation. This issue was ranked fifteenth overall, and was not in the top ten at any of the seven public meeting localities. It was in the top ten at the agency meetings. It received three written comments, two suggesting that the results of the boundary dispute be taken into account before proceeding with the Devils Lake Emergency Outlet project and one (from the Tribe) requesting specific meetings and urging compliance with Executive Order 12989, Environmental Justice requirements. This issue will be analyzed due to legal requirements and coordination with the Spirit Lake Tribe will continue.

4.2 OTHER ISSUES IDENTIFIED

The following issues, although they are identified as important, may need mitigation, and would be discussed in the EIS, are not identified at this time as being key to the decision whether to proceed with an outlet or not. The importance of these issues may change as the EIS process proceeds.

4.2.1 Downstream Erosion and Sedimentation (Issue G)

This issue includes impacts to riverbanks and shorelines on the Sheyenne and Red Rivers, as well as Lake Ashtabula. It involves questions about bank stabilization (mitigation), severity of erosive effects, overbank flooding, elevation of the floodplain, effects on river stage, short- and long-term water level changes, and combined discharges. It is clearly related to Issues D (Downstream Water Quantity) and T (Operations). This issue was ranked fourth overall, and in the top ten at five of the seven public and agency meetings. It was the subject of four written comments.

4.2.2 Operational Issues (Issue T)

This issue includes numerous specific topics, including who pays for the project (construction, maintenance, operations, decommissioning); the nature of operational constraints or conditions (such as water quality standards, ice jams, or storm events); under what circumstances an outlet would "kick in" (elevation or other release triggers, seasonal or other operating windows); design pump capacity and direction of flow; fish entrapment; and notifications and other day-to-day operational parameters. Overall efficiency and effectiveness of the proposed outlet under various conditions are included as well. This issue was ranked sixth overall, and in the top ten at all seven of the public meeting localities and agency meetings. It was the subject of five written comments.

4.2.3 Groundwater (Issue H)

This issue includes questions of the relationship of Devils Lake with the Spiritwood Aquifer, including water quality, water quantity, flood levels, and soil salinity. It was ranked seventh overall, and in the top ten at five of the seven public meeting localities. It was the subject of one written comment.

4.2.4 Devils Lake Agriculture (Issue J)

This issue includes topics such as the effects of higher water tables, reduced land base, and soil salinity on agriculture in the Devils Lake basin currently affected by flooding. This issue is closely related to Issue S (Economic Issues). Two commenters suggested including the upper and lower basins in this area as well. This issue was ranked ninth overall, and ranked in the top ten at three of the seven public meeting localities.

4.2.5 Downstream Agriculture (Issue M)

This issue includes topics such as the effects of higher water tables during outlet operation, potential problems at river crossings during high water, the nature and availability of water for livestock, and potential for bank erosion related to Issue G (Erosion and Sedimentation). This issue was ranked tenth overall, and was in the top ten at three of the seven public meeting localities. It received no written comments.

4.2.6 Devils Lake Natural Resources (Issue K)

This issue includes potential effects on designated special areas (such as scientific and natural areas, wetlands, wildlife areas, and forests) as well as any threatened or endangered species that may occur in the geographic scope of analysis. This issue was ranked seventeenth overall, and was not in the top ten at any of the seven public meeting localities. It received one written comment, highlighting the potential for threatened or endangered species in the Devils Lake area. This issue will be analyzed due to legal requirements related to Federally threatened or endangered species.

4.2.7 Cultural Resources (Issue P)

This issue includes potential effects on archaeological and historical resources (including traditional cultural properties) that may be eligible for the National Register of Historic Places. It ranked twentieth overall, and was not in the top ten at any of the seven public meeting localities. It received no written comments. This issue will be analyzed due to legal requirements.

4.2.8 Water Quality in Devils Lake (Issue A)

This issue includes sulfates, total dissolved solids, mercury, and other water quality parameters currently affecting the communities surrounding Devils Lake, including business and industry (agriculture and recreation). Water quality in Devils Lake is also related to Issue T (Operational Constraints for the Proposed Outlet) and to Issue B (Downstream Water Quality). This issue was ranked eleventh overall, and was in the top ten at fourth of the seven public meeting localities. It received no written comments.

4.2.9 Downstream Aquatic Resources (Issue F)

This issue includes topics related to fishery health, as well as questions about the transfer of non-native biota, effects on riverbank (riparian) vegetation, Red River fishery, and plankton and other nutrients. This issue was ranked twelfth overall, and was in the top ten at four of the seven public meeting localities and at the agency meetings. It received four written comments, all dealing with biota transfer (including Eurasian watermilfoil).

4.2.10 Devils Lake Aquatic Resources (Issue E)

This issue includes potential effects on the recreational fishery in Devils Lake, along with bioaccumulation of mercury, plankton and other nutrients, and questions relating to non-native biota. This issue was ranked sixteenth overall, and was in the top ten at one of the seven public meeting localities. It received three written comments, all dealing with biota transfer issues.

4.2.11 Devils Lake Recreation (Issue N)

This issue includes potential effects on the recreational fishery at Devils Lake, as well as any boating hazards associated with operation of an outlet. This issue was ranked eighteenth overall; it was in the top ten at one of the seven public meeting localities. It received no written comments.

4.2.12 Downstream Recreation (Issue O)

This issue includes potential effects on the Sheyenne and Red Rivers, as well as Lake Ashtabula, and includes both fishery and boating (summer) recreation and snowmobiling and other winter recreation activities. This issue was ranked nineteenth overall, and was in the top ten at one of the seven public meeting localities. It received one written comment, citing the importance of Missouri River recreation.

4.3 ISSUES TO BE SUMMARIZED OR NOT ADDRESSED IN THIS EIS

The following issues were identified as not significant, not significantly impacted by the project, or beyond the scope of analysis for this EIS. They would be summarized in the EIS or dismissed as not significant.

4.3.1 Rocketing and Weather Patterns

One written comment was submitted regarding this issue, in which the use of rockets and their possible perturbations on weather patterns was suggested as a cause of the current flooding problems at Devils Lake and elsewhere. Because this is not a potential environmental impact of the Devils Lake Emergency Outlet project as proposed, it is outside the scope of analysis.

4.3.2 Noise

Neither construction nor operation of the proposed outlet would create significant noise impacts.

4.3.3 Air

Neither construction or operation of the proposed outlet would create significant air quality impacts.

4.3.4 Mineral Resources

Neither construction or operation of the proposed outlet would create significant impacts on mineral resources.

4.3.5 Energy Production

Neither construction or operation of the proposed outlet would create significant impacts on energy use or production.

4.3.6 Inlet to Devils Lake

As stated in PL 105-62, this issue is outside the scope of the EIS.

4.4 ADDITIONAL ISSUES

Many oral and written comments were received at the public meetings, along with numerous technical questions that were responded to at the meetings by Corps and NDSWC staff (see Attachment A). Where possible, all written public and agency comments have been referenced to the alternatives and issues identified above (see Section 3.0 and Table 1). Letters or written comments not specifically mentioned in Section 3.0 and Table 1 contained general comments and opinions about whether or not an outlet should be built, and if so, when and where, and did not raise or address specific environmental issues.

5.0 PUBLIC INVOLVEMENT PROGRAM

5.1 ACTIVITIES CONDUCTED

The Corps and the NDSWC have developed a multi-faceted public involvement program in support of the scoping process and the entire EIS preparation process, including the following components:

- Formal Federal Register notification
- Press releases and media interviews
- Public meetings
- Interagency meetings
- A periodic newsletter
- Updates and other information posted on the World Wide Web (http://www.mvp.usace.army.mil and http://www.water. swc.state.nd.us).
- Public review of draft Scoping Document

The Corps has held or scheduled the following meetings.

5.2 AGENCY MEETINGS

Three meetings were held with representatives from Federal, State, and local agencies, the Spirit Lake Tribe, and other entities (including Canada), to help with the scoping process and to identify data gaps, future study needs, and where study efforts should be concentrated. These meetings were held in:

- Moorhead, Minnesota (January 14, 1998)
- Bismarck, North Dakota (April 29, 1998)
- St. Paul, Minnesota (May 5, 1998)

At the first agency meeting held in Moorhead, Minnesota, issues previously identified through agency coordination were ranked using a nominal group process according to the following categories:

- *Important and impacted*: these issues are the most significant and would be likely to be impacted by the construction or operation of the outlet.
- *Showstopper*: issues that could delay the project due to extreme controversy.
- *Legal threshold*: legal thresholds associated with an issue.
- *Adequate information*: issues that have adequate information available.
- *Information needed*: issues that need more information and/or a significant amount of time and money to assess the impact to this resource.

Based on the "important and impacted" category, the following ranking (with 1 being most important and 15 being least important, note that some issues were tied) was established through the nominal group process:

1. Water Quality and Quantity Downstream
2. Erosion and Sedimentation Downstream
3. Tribal Trust Resources
4. Water Quality in Devils Lake
4. Aquatic Resources in the Sheyenne and Red Rivers
5. Natural Resources Downstream and the Sheyenne and Red Rivers
5. Basin Influence on Lake
6. Operational Concerns
7. Biota Transfer
8. Groundwater Effects Downstream
9. Threatened & Endangered Species
9. Bioaccumulation of Mercury Downstream
10. Natural Resources in Lake and along Outlet Route
10. International Agreement with Canada
11. Effects on Water Users
12. Devils Lake Aquatic Resource
13. Groundwater Effects in Devils Lake and along Outlet
14. Bioaccumulation of Mercury in Devils Lake
15. Erosion and Sedimentation in Devils Lake

After prioritizing the issues, the remainder of the first meeting and the next two meetings were used to identify data gaps and to determine future study needs and where study efforts should be concentrated. The Bismarck, North Dakota location was selected to facilitate attendance by North Dakota representatives and the St. Paul, Minnesota meeting location was selected to facilitate attendance by representatives of Minnesota and Canada.

5.3 COORDINATION WITH SPIRIT LAKE TRIBE

The Corps will continue to coordinate with the Spirit Lake Tribe. It is important to note that one of the public meetings (March 25, 1998) was held at the Spirit Lake Casino, for the convenience of residents of the southern side of Devils Lake. That meeting was not intended to substitute for a specific meeting with the Tribe, or to constitute a part of the Corps' E.O.12989 (Environmental Justice) compliance.

5.4 PUBLIC MEETINGS

A series of seven public meetings was held during the week of March 23, 1998:

- Valley City, North Dakota (March 23)
- Lisbon, North Dakota (March 24)
- Cooperstown, North Dakota (March 24)
- Fort Totten, North Dakota (March 25)
- Devils Lake, North Dakota (March 25)
- Grand Forks, North Dakota (March 26)
- Fargo, North Dakota (March 27)

A total of approximately 340 people attended these meetings (ranging from 25 in Cooperstown to 70 at Devils Lake).

The meeting agenda consisted of a 30-minute briefing about the nature of scoping, the Congressional authority for the project, the background of flooding at Devils Lake, the nature of the proposed action, the nature of the environmental issues that had been identified thus far in the process, and the approximate timetable for the EIS.

At the Valley City, Lisbon, and Cooperstown meetings, additional information was presented on Sheyenne River concerns and potential effects on the Sheyenne River. Similarly, at the meetings in Grand Forks and Fargo, potential effects on the Red River were discussed.

The meeting facilitator then gave an overview of the 20 issues that had been previously identified by government agency representatives and public officials. These issues had also been listed and explained in the project newsletter, distributed prior to the scoping meetings.

This was followed by an activity in which participants were asked to prioritize, from one to five, a list of twenty environmental issue categories that had been identified based on previous Devils Lake studies and agency scoping, and to submit any additional issues or extensive comments in writing.

Finally, time was allotted to questions and answers about the details of the project and the EIS process, both during the formal meeting and one-on-one with experts from the Corps and the NDSWC. Each meeting ended when there were no more questions or comments from the participants. Representative questions and comments are included in Attachment A.

Seven persons submitted additional issue sheets and nine submitted additional written comments at the meetings, and 28 (several from agencies or organizations) submitted written comments after the meetings but before the deadline for comments. The list of public scoping meeting written commenters is in Attachment B and scoping meeting comment letters were included as Volume II of the draft Scoping Document (June 1998).

5.5 SCOPING DOCUMENT DISTRIBUTION

This Scoping Document is being distributed to all persons and organizations on the Corps mailing list and to any others who request it. In addition, copies of both Volume I and Volume II of the Scoping Documents will be available at the following Information Centers:

Devils Lake Carnegie Library
623 4th Avenue
Devils Lake ND 58301-2421
701/662-2220

Fargo Public Library
102 3rd St. North
Fargo ND 58102-4899
701/241-1492

Grand Forks Library
2110 Library Circle
Grand Forks ND 58102-6324
701/772-8116

Griggs County Library
902 Burrel Avenue
Cooperstown ND 58425-2500
701/797-2214

Lisbon Public Library
409 Forest Street
Lisbon ND 58054-0569
701/683-5174

Tribal Community Center
Main Street
Fort Totten, ND 58335
701/766-4221

Valley City Public Library
410 Central Avenue North
Valley City, ND 58072-2949
701/845-3821

Volume I of the Scoping Documents will also be available on the Internet (at URL http://www.mvp.usace.army.mil). Requests for copies of the Scoping Document should be sent to:

Robert Anfang
U.S. Army Corps of Engineers
St. Paul District
Attention: PM-E
190 - 5th St. East
St. Paul MN 55101-1638

Phone: 651/290-5268
Fax: 651/290-5800
email: robert.a.anfang@usace.army.mil

6.0 DRAFT SCOPING DOCUMENT REVIEW COMMENTS - SUMMARY AND RESPONSES

Twenty-two comment letters were submitted during the public comment period on the draft Scoping Document and are reproduced in Volume II of this Scoping Document. In several cases, more than one letter addressed the same topic.

All comments are summarized below according to which section of the draft Scoping Document they discussed. Responses are provided for each summarized comment. For ease of future reference, each comment is numbered in sequence.

Topics for which no comments were received are not listed below. One commenter had no comments on the draft Scoping Document, but wished to remain informed and participate throughout the rest of the NEPA process. Another commenter responded to apparent errors of fact in several letters published as Volume II of the draft Scoping Document, and commended the Corps on the "fine work" put into the draft Scoping Document as a whole. A third commenter submitted a comprehensive package of materials as their contribution to helping identify significant issues affecting the Spirit Lake Tribe.

General Comments on Aspects of the Proposal or the NEPA Process

COMMENT 1: The effectiveness of the proposed outlet in terms of addressing the current "emergency" should be discussed in more detail. The EIS should disclose the best available information on how the outlet will address the current flooding situation.

RESPONSE: The best available information will be disclosed and analyzed in the EIS, and the effectiveness of the proposed outlet will be evaluated.

COMMENT 2: The timing and lack of public review of the Corps' "Report to Congress" are problematic. The delay in submitting the Report results in delaying the DEIS, which must be completed prior to construction of an outlet. It is not legally or logically possible

for the Corps to make a Report to Congress confirming environmental acceptability and National Environmental Policy Act (NEPA) compliance when the NEPA process is not yet complete. We object to considering the Report to be an internal document without provisions for public review.

RESPONSE: The Report has been delayed to enable several crucial environmental and engineering studies to be completed. It is the Corps' intention to proceed as quickly as possible with the Report and the NEPA process, to avoid delays in the decision. The Report does not serve as or substitute for the Record of Decision under NEPA; therefore, it is perfectly possible to develop a report that meets the requirements of P.L. 105-62 before the NEPA process is complete. The Corps is required to comply with NEPA for all of its activities; P.L. 105-62 did not add a special requirement for this proposal.

The Report to Congress is an internally developed document required by law; it is not part of the NEPA process. An interim report to Congress is being prepared which summarizes the current status of the study and describes the progress of the NEPA process. The main report will be distributed to everyone on the Corps mailing list and will be available for public review at the St. Paul District Office and at the designated repositories prior to submittal to Congress. Any environmental and other studies undertaken for or described in the Report may later be used to help develop the EIS, along with any other kind of relevant study results. Environmental acceptability will not be able to be determined until the final report to Congress and NEPA process is complete.

COMMENT 3: Cumulative impact analyses should be conducted for all activities, including impacts on wetlands, surface and groundwater in the Devils Lake Basin, as well as along the potential outlet route through the Sheyenne and Red River systems into Canada.

RESPONSE: Cumulative impacts must be analyzed as part of the NEPA process for those resources in the impact area for which the expected cumulative effects are significant. Until preliminary analyses are completed during development of the EIS, it is not known which specific resources will be subject to detailed cumulative effects analysis in accordance with the Council on Environmental Quality (CEQ) 1997 guidance.

COMMENT 4: The DEIS should evaluate both connected actions and cumulative impacts of all relevant activities that can be reasonably predicted in the Devils Lake, Sheyenne and Red River basins.

RESPONSE: The CEQ and Corps regulations require these analyses to be performed as part of the NEPA process. CEQ's 1997 guidance on cumulative effects analysis provides specific procedures for identifying which actions are "relevant" and "can be reasonably predicted". The Corps will adhere to this guidance and address these topics in the EIS.

COMMENT 5: It is not clear from the draft Scoping Document whether a cumulative effects analysis is being utilized at present to assess the expedited inflows to the lake that result from

currently operating drains and drained wetlands, and to contrast that to the projected outflow as a result of intermittent outlet operation.

RESPONSE: Characteristics of inflow and outflow of the outlet will be discussed in the EIS. The effects of drainage will be identified to the extent possible.

COMMENT 6: A complete mitigation plan should be developed prior to construction. Mitigation and restoration efforts should be monitored to determine if the efforts have been effective and are meeting the goals of the mitigation requirements.

RESPONSE: Mitigation and monitoring plans will be included in the EIS, and must be discussed in the Record of Decision. One function of an EIS is to identify and analyze the environmental impacts of a proposal and alternatives so appropriate mitigation measures can be developed. Impacts will be identified to the extent possible but because operation will depend on actual lake levels, it will not be possible to predict actual effects. Therefore, complete mitigation plans cannot be developed prior to implementation. If the decision is made to go forward with an outlet or alternative, post-implementation monitoring will take place to identify impacts and mitigative measures. The EIS will outline how this will be accomplished.

COMMENT 7: Upper basin people are concerned about the people in the lower basin who are losing their land to the rising Devils lake and see a real need for a managed outlet.

RESPONSE: The EIS will explore several approaches for resolving this problem.

Section-by-Section Comments

1.0 Introduction

Two commenters wanted additional clarification of purpose and need for the project, the definition of the word "emergency", and the nature of the scoping process. Specific topics and responses are as follows:

COMMENT 8: It is not clear why "reduction of flood protection costs" is stated as a purpose and need for the project. Does this take into account the anticipated federal, state, and local costs for construction and operation/ maintenance?

RESPONSE: Millions of dollars have been expended on road raises, levees, building relocations, protection of sanitary systems, etc. to reduce damages and to protect property and developments. In addition to preventing damages, the outlet may reduce continued expenditures of funds. Therefore, reduction of flood protection costs is part of the purpose and need for the project. Cost-benefit analyses will include analysis of both construction and operation/maintenance costs for, as well as expected benefits of, the proposed action.

COMMENT 9: We do not consider this to be an emergency situation. Please define "emergency" as you are using it.

RESPONSE: The Scoping Document uses the term "emergency" in its legal sense. The flooding situation in the Devils Lake area has been declared an "emergency" by Dr. John Zirschky, then Acting Assistant Secretary of the Army, on October 15, 1997. In addition, Congress in P.L. 105-18 (June 1997) required the Corps to prepare an EIS for "an emergency outlet from Devils Lake to the Sheyenne River". The potential for lake levels to fall before construction begins, or before the proposed outlet becomes operational, will be discussed in the EIS.

COMMENT 10: It should be stated that the end result of the NEPA process is the selection of the alternative that satisfies the purpose and need for the project, and causes the least overall adverse effects to the biological and human environment.

RESPONSE: The CEQ regulations, which govern the NEPA process, require that the Record of Decision (ROD), which describes the Agency decision based in part on analyses displayed in an EIS, must identify which alternative examined in detail is the most "environmentally preferable", but it is not required to select that alternative. The agency must also state whether "all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not" (40 CFR 1505.2). It is a goal of the Corps in planning this or any other project to meet the purpose and need while minimizing harm to the environment.

COMMENT 11: No deviations from the normal NEPA process should be considered; no NEPA requirements should be waived; the normal time frame should be followed; no construction should begin until after the process is completed; and mitigation agreements should be made before construction begins.

RESPONSE: At this time, the Corps is not pursuing the emergency provisions of NEPA as described in 40 CFR 1506.11. The Corps is following the NEPA process, including all requirements and **timetable**s, for this project. This means that the ROD must be signed before construction can begin. Methods to determine mitigation will be addressed in the EIS.

COMMENT 12: Scoping should be "early and open" yet Peterson Coulee was selected as a preferred route prior to scoping. The scoping process should have started at the time that alternatives were first being considered.

RESPONSE: The purpose of scoping is "to determine the scope of issues to be addressed and for identifying the significant issues related to a *proposed action*" (40 CFR 1501.7). Construction of an emergency outlet along Peterson Coulee is the proposed action, based on numerous prior studies, meetings, and public and agency input. Additional comments were solicited (and received) during the public scoping period, and during review of the draft Scoping Document. A number of these comments included suggestions or comments about alternatives (see below). Scoping cannot begin until an agency has an actual proposal, defined in the CEQ regulations as existing "at that stage in the development of an action when an agency … has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully

evaluated" (40 CFR 1508.23). Other alternatives are being investigated in this study and will be addressed in the EIS.

COMMENT 13: There are many objectives that could be considered for this project. The purpose should state which specific objectives are being pursued.

RESPONSE: The objective (purpose and need) for the project is as stated in § 1.3 of the draft Scoping Document: "the reduction of flood damages and flood protection costs related to the rising lake levels in the flood-prone areas around Devils Lake."

COMMENT 14: The DEIS should clarify whether the "emergency outlet" will be located on the same route as a potential "permanent outlet".

RESPONSE: There are no plans to remove the emergency outlet after it is constructed. The purpose of this EIS is to explore the environmental consequences of the emergency outlet and alternatives as directed by Congress in P.L. 105-18. Any future use of the emergency outlet after the present emergency has subsided would probably be controversial and subject to negotiation among various interests.

2.0 Geographic Scope

One commenter addressed this topic, suggesting that the scope should be expanded beyond the Canadian border.

COMMENT 15: Impacts such as the potential for the spread of Eurasian watermilfoil (an exotic species) justifies the expansion of the geographic scope to include Canada.

RESPONSE: The spread of exotic species is included as an issue to be examined in the EIS (see § 4.2.9 of the draft Scoping Document). The 1909 treaty between the United States and Great Britain will be addressed. These and other issues (such as water quality) will be discussed with the Canadian government through the International Joint Commission/State Department consultation process required in P.L. 105-62. Should the proposed outlet be built, continuing discussions will take place as appropriate to ensure that adverse effects on Canadian waters and other resources are avoided, minimized, or mitigated.

3.0 Scope of Alternatives

Ten commenters addressed this topic, focusing on an outlet to Stump Lake, upper basin management, and infrastructure protection.

COMMENT 16: The discussion of Infrastructure Protection and Upper Basin Management is confusing. Are these separate alternatives, or part of No Action?

RESPONSE: Both. As stated in the draft Scoping Document, "No Action" includes the continuation of existing upper basin management and infrastructure protection activities, as it represents the current

baseline condition and these activities are ongoing. Other alternatives to be addressed in the EIS include upper basin management and infrastructure protection activities as needed if it is decided not to build an emergency outlet as proposed. In addition, continued upper basin management and infrastructure protection activities will most likely be included along with any outlet constructed as a result of this EIS, as stated in § 3.5, "Combinations of these Measures".

COMMENT 17: The Corps should consider an outlet on the east end of Devils Lake, into or through Stump Lake.

RESPONSE: While several previous studies have explored this option, the proposed action being considered in this EIS is an outlet from the west end of Devils Lake along Peterson Coulee, due to water quality conditions in Devils Lake and the Stump Lakes which limits releases. As stated in section 3.0, other alternative outlet alignments and the results of studies will be summarized.

COMMENT 18: The Corps has arbitrarily limited the focus of the EIS to analysis of impacts associated with the construction of the proposed outlet rather than other alternatives that could address the situation in a more cost effective and less environmentally harmful way.

RESPONSE: The proposed action, as mandated by Congress, is an "emergency outlet from Devils Lake to the Sheyenne River". As stated in the draft Scoping Document, a total of five alternatives (including No Action) will be discussed in the EIS, including an outlet, infrastructure protection, upper basin management, No Action, and various combinations of actions.

COMMENT 19: The proposed outlet is inconsistent with the Administration's Clean Water Action Plan and Wetlands Executive Order. The Corps should consider increasing wetland acreage through an enhanced Wetland Reserve program, seeking to close legal as well as illegal drains, and other means.

RESPONSE: Any alternative selected in the Record of Decision will be consistent with all applicable laws, regulations, and Executive Orders, in addition to applicable national policy. As stated in the draft Scoping Document, numerous potential actions are included in the overall topic of "Upper Basin management" and will be examined in the EIS.

COMMENT 20: Study reports for each alternative should be made available to the public.

RESPONSE: Data from study reports will be summarized in the EIS. All reports and information use in the preparation of the EIS will be available at the St. Paul District Offices.

COMMENT 21: This section should describe the methods and criteria used to evaluate alternatives, the amount of public support for each alternative, and how that information is used in the NEPA process.

RESPONSE: Methods and criteria used to evaluate alternatives will be described in the EIS, and in the Record of Decision as required by 40 CFR 1505.2. While the amount of public support for any specific alternative is important for the decision maker to know, the purpose of the NEPA process is

not to garner support for a specific course of action, but to explore the environmental consequences of alternative courses of action and display that information for the public and the decision maker. Information on public support, as well as other reactions of the public during the NEPA process, is gathered through scoping, at the beginning of the process, and through public review of a draft EIS (DEIS) near the end of the process. The public can even review its reviews: All comments on the draft Scoping Document are reproduced in Volume II of this Scoping Document, and all comments on the Draft Environmental Impact Statement (DEIS) are published in the Final Environmental Impact Statement (FEIS).

COMMENT 22: The alternatives section should discuss the expected efficacy of the proposed outlet for solving short-term flooding problems.

RESPONSE: The purpose of a Scoping Document is simply to display for the public the scope of analysis for the EIS to be prepared. As stated in the draft Scoping Document, five alternatives will be evaluated in the EIS. The efficacy of each (or a combination) for resolving both short- and long-term flooding problems will be discussed in the EIS.

COMMENT 23: Upper Basin management should be identified as a "Key Issue" in § 4.1 of the Scoping Document in addition to being an alternative in § 3.3.

RESPONSE: "Key Issues" as identified during scoping include potential environmental (including social and economic) consequences of the proposed action that are "key" to a decision whether or not to proceed with the outlet. Upper Basin management is an alternative to be explored either alone or in conjunction with other actions, and not an environmental consequence of an action or actions. Therefore it was not identified as a key issue.

COMMENT 24: All alternatives should be evaluated in terms of costs, environmental impacts, benefits, and other issues, and a matrix should be developed showing this information for the proposed action and alternatives.

RESPONSE: A comparison of alternatives will be included in the EIS as required by 40 CFR 1502.14.

COMMENT 25: Development of one or more polders should be considered as an option to protect the city of Devils Lake, the town of Minnewaukan, and agricultural lands.

RESPONSE: Development of polders (low-lying reclaimed land protected by dikes) may be considered as part of Infrastructure Protection, along with road raises, levee construction, relocation of businesses and homes, and administrative controls such as zoning.

4.0 Scope of Issues

Twelve commenters focused on environmental issues, either in general or providing information or opinions related to one or more specific issues identified in the draft Scoping Document.

General Comments

COMMENT 26: The key issues remain the same as those put forth prior to scoping.

RESPONSE: No "key issues" were identified prior to public scoping. Rather, twenty "potential issues" were identified based on previous studies, internal Corps expertise, and interagency meetings as required by 40 CFR 1501.7. This same regulation requires the Corps to "determine the significant issues to be analyzed in depth in the EIS" and to "identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review". Based on public and agency input during the formal public scoping process (including written and oral comments and over 200 "issue ranking sheets" from seven public meetings), the Corps proposed the division in the draft Scoping Document between "key issues", "other issues", and "issues to be summarized".

COMMENT 27: Public responses at the scoping meetings should not be used as the primary basis to determine the overall ranking or importance of the issues.

RESPONSE: As stated in § 1.5 of the draft Scoping Document, input on issues came from three sources: interagency meetings, public meetings, and written comments. Over 200 "issue ranking sheets" were returned from the seven public meetings held in March 1998. Issues listed in the draft Scoping Document were separated into "key issues" and "other issues" based in part on these sheets, along with internal Corps expertise and other agency input, as required by 40 CFR 1501.7. Public rankings are displayed in Table 1 of the draft Scoping Document for information only, and are not intended to imply that this method was the primary basis used to select issues for study in the EIS. In fact, careful comparison of various rankings as displayed in Table 1 will show that some issues rated lower by the public ended up as "key issues", due to legal and other requirements. The purpose of scoping is not to "vote" on popularity of issues, but to help the Corps identify what topics require further study during preparation of an EIS.

COMMENT 28: The Scoping Document should include detailed information on each of the key issues that will be addressed, to provide guidance for undertaking the required studies and to ensure the specific topics to be addressed in the EIS.

RESPONSE: The purpose of the Scoping Document is to help identify concerns that need to be discussed in the EIS, and not to provide a detailed list of studies. The Scoping Document does identify the "key" issues and provide guidance for initial studies.

COMMENT 29: Present and future transfer of biota from Devils Lake to the Red River should be addressed.

RESPONSE: This issue is identified in § 4.2.9 and 4.2.10 of the draft Scoping Document and will be discussed in the EIS.

§ 4.1.1 Downstream Water Quality (Issue B)

COMMENT 30: The EIS should discuss the impacts on water quality standards of North Dakota, Minnesota, and Canada, including a complete analysis of total dissolved solids (TDS), sulfate and nutrient impacts.

RESPONSE: Water quality is designated a "key issue" and was identified in the draft Scoping Document as one of the most important issues to be examined in the EIS.

COMMENT: 31 The EIS should also examine mercury, algal toxins, arsenic, copper, and lead.

RESPONSE: These topics will be included in the EIS.

COMMENT 32: Evaluate the consequences of additional nutrient enrichment resulting from the proposed action, including potential for the production of algal toxins and the consequences of water chemistry changes on fish indigenous to the downstream Red River basin.

RESPONSE: These topics will be included in the EIS.

COMMENT 33: Report on the algal toxins, trace elements, and pesticides in Devils Lake and assess the significance of these variables downstream at the Canada - US boundary.

RESPONSE: These topics will be included in the EIS.

COMMENT 34: Comprehensive modeling should be undertaken to demonstrate that water quality standards will not be exceeded at the Canadian border and will not result in cumulative incremental deterioration of water quality.

RESPONSE: Studies and modeling projects are underway and their results will be incorporated into the EIS.

COMMENT 35: Modeling should also include scenarios that account for water quality changes over time in Devils Lake.

RESPONSE: This factor will be included in the models being developed for the EIS.

COMMENT 36: Water quality monitoring should include chemical, biological, and physical (habitat) parameters. A extended monitoring program should be in place as long as any action or environmental change due to the operation of an outlet continues, including monitoring of impacts during drought cycles.

RESPONSE: A need for a comprehensive water quality monitoring program will be identified in the EIS. The components of the monitoring program will be developed prior to project implementation.

§ 4.1.2 Downstream Water Quantity (Issue D)

COMMENT 37: The EIS should examine the exacerbation of flooding during spring runoff and during periods of summer precipitation events.

RESPONSE: The outlet would not be operated during spring flood events. However, there is a potential for coincidental summer events. This will be addressed in the EIS.

COMMENT 38: The EIS should consider the cumulative effects of two additional proposed projects that could potentially augment flows into the Sheyenne River: the New Rockford Canal and the Tri-County Drain.

RESPONSE: Other reasonably foreseeable projects will be assessed in the EIS as part of the cumulative impacts analysis required by 40 CFR 1508.8, and in accordance with CEQ guidance.

COMMENT 39: A heavy rainfall (e.g., thunderstorm) would be a flood threat to the downstream Sheyenne River under normal operating conditions of the proposed outlet.

RESPONSE: The EIS will examine this possibility. The development of the operating plan will take this into consideration. That is one reason this issue is identified as a "key issue" to be examined in the EIS.

COMMENT 40: Modeling should demonstrate how the proposed action and alternatives will affect flooding at the US - Canada border.

RESPONSE: This will be included in the models developed for the study.

COMMENT 41: Analysis of impacts that can be expected on the Sheyenne River ecosystem if high flows are extended beyond the "normal" hydrograph should be included in the EIS.

RESPONSE: This analysis will be included in the EIS.

COMMENT 42: The proposed outlet plan creates the potential for future flooding of Sheyenne River riparian areas and agricultural lands.

RESPONSE: Downstream water quantity has been identified as a "key issue" for exploration in the EIS.

§ 4.1.3 Water Quantity in Devils Lake (Issue C)

COMMENT 43: This issue should include analysis of potential future drainage in the upper basin and how that may affect wetland resources. This topic should be a major commitment of the EIS and not relegated to some type of ancillary analysis.

RESPONSE: The potential for future drainage and its general effects will be addressed in the EIS.

§ 4.1.4 Economics (Issue S)

COMMENT 44: A benefit/cost analysis for outlet and basin-wide alternatives should be conducted, including both capital and operating costs, and downstream water treatment costs.

RESPONSE: A detailed benefit/cost analysis will be conducted for the outlet, including capital, operating and downstream water treatment costs. The EIS will contain a general economic analysis of the alternatives, although specific benefit/cost calculations for each alternative may not be prepared.

COMMENT 45: This section should state that any alternative where the benefits do not clearly outweigh the costs would be considered to be not reasonable and rejected. It should also contain a description of how many farmers have been affected by the lake, the impacts to them, and how this has affected the economy of the region.

RESPONSE: A detailed economic analysis will be conducted for the outlet. The EIS will contain a general economic discussion of alternatives. This analysis is one of many factors which are considered in making the final decision about whether to proceed with the proposed action or an alternative. An economic analysis determining Corps interest in alternatives and other basin actions will not be conducted. A relative economic analysis will be conducted for the outlet and infrastructure protection. Decision factors must be disclosed in the Record of Decision, along with the rationale for their application. Information on the current situation affecting farmers and the regional economy will be contained in the EIS.

§ 4.1.5 Water Users / Water Supply (Issue I)

COMMENT 46: The Scoping Document should address whether the sulfate levels in the Sheyenne River should be managed at/below the ambient standard of 450 mg/l or use the drinking water standard of 200 mg/l. This choice has different ramifications for treatment.

RESPONSE: The Scoping Document identifies this topic as a "key issue" to be examined in the EIS. The analysis in the EIS will use the current ambient water quality standards and discuss the needs of water treatment plants to meet drinking water standards. Mitigation needs will be discussed in the EIS.

COMMENT 47: Provide a comprehensive report on impacts on downstream water users and water management plans, and mitigation, and the consequences at the US - Canada border, including discussion of proposed revisions to US drinking water standards.

RESPONSE: This information will be included in the EIS. Revisions to drinking water standards are not being considered at this time. (Also, see response 46.)

§ 4.1.6 Downstream Natural Resources (Issue L)

COMMENT 48: Consider impacts on fish and wildlife and their habitat; threatened or endangered species or species of special concern; drought effects on soil moisture and hydrology; effects on natural plant communities; wetlands (including any unavoidable losses).

RESPONSE: The EIS will contain discussions of these topics. This issue was identified as a "key issue" in the draft Scoping Document.

§ 4.1.7 Other States and Nations

COMMENT 49: The draft Scoping Document does not appear to reflect the critical importance of conformity with the 1909 Boundary Waters Treaty.

RESPONSE: This Treaty is one of several critical issues relating to impacts on other States and Nations that causes this topic to be identified as a "key issue" in the draft Scoping Document. As stated in the draft Scoping Document, it will be addressed in the EIS.

COMMENT 50: For any feasible options involving a connection to the Hudson Bay basin, describe its operating plan, future ownership, contingency plans, mitigation plans, and maintenance responsibilities, such that future operation, contingency, and maintenance would not jeopardize Canadian waters.

RESPONSE: The EIS will discuss water quality effects at the Canadian border, operation, maintenance and ownership of the outlet, mitigation of impacts, and the status of required consultation with Canada.

COMMENT 51: The issue of differences in state water law between North Dakota and Minnesota will need to be addressed in the EIS. Which water law will prevail in the operation of the outflow to the Sheyenne River and ultimately to the Red River?

RESPONSE: North Dakota water law would prevail on the Sheyenne River. Both Minnesota and North Dakota regulations would be considered on the Red River.

§ 4.1.8 Spirit Lake Nation (Tribe) (Issue Q)

COMMENT 52: It would be wise to achieve resolution of the current lawsuit regarding boundaries of the Spirit Lake Nation prior to moving forward with an outlet decision.

RESPONSE: Resolution of the lawsuit regarding boundaries of the Spirit Lake Tribe is outside the jurisdiction or control of the Corps. The current situation will be discussed in the EIS. This and other current legal questions surrounding the Spirit Lake Tribe helped to identify this topic as a "key issue" to be addressed in the EIS.

COMMENT 53: Four issues affecting the Spirit Lake Nation include: (1) use and abuse of the waters of Mne-Wakan (Devils Lake), which may involve the American Indian Religious Freedom Act; (2) trust or sovereignty issues related to water re-disposition projects; (3) negative impacts on lands, water quality, etc. involving the Bureau of Indian Affairs; and (4) potentially discriminatory practices such as differential access to reservation facilities.

RESPONSE: These issues are indeed important, which is why this topic was identified as a "key issue" to be addressed in the EIS. A consultant has been retained to ensure that ongoing communications between the Corps and various representatives of the Spirit Lake Tribe are appropriate and thorough.

COMMENT 54: The Corps should carefully examine the potential impact of an outlet on the environment as well as the social and cultural heritage of the Spirit Lake Nation.

RESPONSE: The potential environmental effects along the outlet route, as well as at Devils Lake and downstream along the Sheyenne and Red Rivers, are being studied as part of the EIS. The Corps is coordinating with the Spirit Lake Tribe regarding social and cultural heritage issues which may be affected by construction and operation of an outlet.

COMMENT 55: The scoping study must recognize the Spirit Lake Nation's concern for the preservation of traditional cultural sites and protection of cultural resources.

RESPONSE: Identification and protection of significant cultural resources sites and Traditional Cultural Properties is an integral part of compliance with the National Historic Preservation Act, as stated in response to Comment 54. In addition, coordination with the Spirit Lake Tribe is identified as a "key issue" to be addressed during preparation of the EIS.

COMMENT 56: The proposed outlet would violate a majority of the sacred sites of the Spirit Lake Nation without regard to tribal and Federal laws to protect these culturally sensitive areas.

RESPONSE: The Corps will comply with all Federal laws and regulations protecting sacred resources.

COMMENT 57: The sovereign rights of the Spirit Lake Nation which stem from treaty, aboriginal and reserved rights to surface and groundwater resources must be upheld and maintained in accordance with the legal, cultural and social interests of the Spirit Lake Nation.

RESPONSE: The EIS will discuss these issues, as stated in the draft Scoping Document.

Additional Issues Suggested as "Key Issues"

COMMENT 58: Illegal and legal drains, including the history of Channel A should be discussed in the EIS and highlighted as a "key issue".

RESPONSE: The general effect of these actions in the upper basin and their environmental impacts will be addressed in the EIS. However, this is not considered to be a "key issue" in the decision as to whether to proceed with an outlet.

COMMENT 59: A history of flood plain elevations in the vicinity of Devils Lake should be presented, as compared to elevations of residences, businesses and other buildings which have recently been relocated or destroyed. The NEPA process should identify any impacts, including costs of relocation or destruction, due to flooding that have been caused by allowing people to build in areas where permission should not have been granted. Agencies responsible for setting these elevations and permitting building should be identified, and an appropriate flood plain elevation should be addressed to facilitate future planning.

RESPONSE: Long-term regulatory flood plain elevations have been established for the Devils Lake basin by the Federal Emergency Management Agency (FEMA). The enforcement of regulations is the responsibility of local zoning authorities which are overseen by State or Federal authorities. Costs of relocations and elevations of structures will be addressed to the extent necessary for economic evaluation in the EIS.

COMMENT 60: Land devaluation along the proposed outlet corridor should be discussed, including reduced rental rates for farmland, reduced numbers of renters, reduced county taxes due to lower land values, and reduced productivity of the land due to disturbance along the pipeline route.

RESPONSE: The Corps does not anticipate any reductions in land values due to construction of the proposed pipeline, but this area will be examined in the EIS as part of the "Economics" issue, which has been identified as a "key issue" in the draft Scoping Document.

§ 4.2.1 Downstream Erosion and Sedimentation (Issue G)

COMMENT 61: This issue should be designated a "key issue" because of the other extensive and far reaching impacts that could result from substantial bank erosion (such as stabilization costs, riparian impacts, stream channel changes, turbidity changes, and general landowner concerns). In addition, assessment of downstream erosion and sedimentation impacts is critical to demonstrate that international obligations can be met.

RESPONSE: This issue will be addressed in the EIS. It was not designated a "key issue" in the Scoping Document because any alternative that is selected must incorporate mitigation plans to avoid, minimize, or otherwise compensate for downstream sedimentation and erosion caused by the selected alternative. Studies of erosion/aquatic habitat are being conducted to assess the potential impacts under various scenarios, and these results will be discussed in the EIS and taken into consideration in the final decision.

§ 4.2.2 Operational Issues (Issue T)

COMMENT 62: Pumping at the proposed west end outlet should not begin until natural flows into Stump Lake have begun. This would improve water quality and reduce cost of pumping.

RESPONSE: This suggestion presupposes an overflow into Stump Lake. Several lake level futures and operating scenarios will be explored during preparation of the EIS; the final decision will be described in the Record of Decision at the conclusion of the NEPA process. Allowing the water to overflow to the Stump Lake first would incur additional damages and is not being considered at this time.

COMMENT 63: We recommend that the Corps develop a monitoring plan paired with an active operation/management plan that can and will react to changes in the aquatic system, so the flood control system can operate so as to minimize adverse downstream impacts, maintain water quality and ensure protection of downstream uses and the Devils Lake System.

RESPONSE: Operations would be monitored to ensure that adverse environmental, social and economic impacts are minimized throughout the system. Modifications to the operating plan would be considered if necessary.

COMMENT 64: We suggest that as part of the operation/management plan, a "control committee" of impacted parties be formed and meet regularly to decide the best management options based on actual monitoring data.

RESPONSE: In 1997, the North Dakota State Legislature created the "Devils Lake Outlet Management Advisory Committee" to explore questions such as the operating level for Devils Lake and an operating plan. This committee is chaired by the State Engineer and includes members from the Devils Lake Joint Water Resource Board, the Red River Joint Water Resource Board, an appointee named by the Spirit Lake Tribe Tribal Council, one county commissioner each from Ramsey and Benson Counties, and three members appointed by the Governor to represent downstream interests (currently filled by representatives from Ft. Ransom, Fargo and North Dakota Game and Fish Department). The committee will draw on the Corps of Engineers, USGS, NDSWC, other Federal and State agencies, and various advisors and potentially affected parties for input to its deliberations. It is expected that any operating plan will be subject to periodic review to fine tune operation.

COMMENT 65: Impacts to the downstream environment can vary significantly depending upon the operational strategy, monitoring safeguards, regulatory control, oversight procedures,

etc. These must be detailed and assessed as a "key issue". The operating agency should be identified.

RESPONSE: These variables will be assessed and described in the EIS. A major point of developing specific operational strategies is to avoid or minimize environmental impacts from the operation of the proposed outlet. This was not identified as a "key issue" as to whether or not to proceed with an outlet.

COMMENT 66: The operating level for Devils Lake should allow for a reserve for use in Sheyenne River during drought periods.

RESPONSE: Several operating scenarios will be explored during preparation of the EIS. At this time, supplemental flows or drought plans are not being considered.

COMMENT 67: The EIS should address the effectiveness of the outlet in terms of addressing the current emergency. At this time it appears that the "virtual flood" exercise provides the best tool for evaluating this factor.

RESPONSE: All alternatives will be evaluated in terms of how well they meet the purpose and need for the project, as stated in the Scoping Document. Its effectiveness in addressing the current emergency will be discussed.

COMMENT 68: The compatibility of the "trigger" elevations with the operating levels recommended by state and federal agencies should be assessed, along with information regarding the range this intake elevation will maintain and a determination of whether this is a reasonable level if the lake continues to rise.

RESPONSE: Operating alternatives, including trigger elevations and ranges of lake levels, would be discussed in the EIS. A final operating plan would not be formulated until a later date. A supplemental NEPA would be prepared if required.

§ 4.2.3 Groundwater (Issue H)

COMMENT 69: Groundwater recharge and protection in the Devils Lake Basin should be examined in the EIS.

RESPONSE: Groundwater effects would be discussed in the EIS.

COMMENT 70: We believe groundwater should be a "key issue" because the North Dakota State Geologist has stated that the Spiritwood Aquifer may account for much of the water entering Devils Lake. This would make an outlet much less effective or even ineffective, so the interaction between the groundwater and the lake needs to be understood clearly and explained in the NEPA process.

RESPONSE: This issue will be addressed in the EIS, as stated in the draft Scoping Document. However, it is not identified as key to the decision whether to proceed with an outlet or not.

§ 4.2.7 Cultural Resources (Issue P)

COMMENT 71: The EIS should address cultural resource issues related to the Spirit Lake Nation.

RESPONSE: Studies are currently being conducted to identify any cultural resources likely to be impacted by the proposed action or alternatives. The results of these studies will be described in the EIS. Cultural resources eligible for the National Register of Historic Places (including Traditional Cultural Properties) are required to be considered for protection under Section 106 of the National Historic Preservation Act during the NEPA process. Other cultural issues will be addressed as part of ongoing consultation, as discussed in § 4.1, above.

COMMENT 72: The Corps should recognize and respect existing Federal laws in the protection of sacred and religious sites.

RESPONSE: The Corps will comply with all Federal and tribal laws protecting sacred resources, as stated above. This issue will be discussed in the EIS, as stated in the draft Scoping Document.

§ 4.2.8 Water Quality in Devils Lake (Issue A)

COMMENT 73: It is our understanding that the issue of methyl mercury in Devils Lake will be addressed in the EIS, especially an assessment of the extent to which additional methyl mercury will be produced from newly flooded land.

RESPONSE: This is correct. The issue of methyl mercury will be addressed in the EIS.

COMMENT 74: Devils Lake is salty, and as more of the best quality water leaves the lake through a proposed west end outlet, the remaining water will become more salty.

RESPONSE: The salinity effects of the proposed action will be examined in the EIS. Salinity levels in Devils Lake affect operational parameters of the proposed outlet, as well as downstream water quality and water user issues, both of which were identified as "key issues" to be addressed in the EIS.

COMMENT 75: Water quality in Devils Lake is integral to both Downstream Water Quality (§ 4.1.1) and Operational Issues (§ 4.2.2) and therefore of concern in terms of meeting international obligations. It should be assessed especially in relation to drawdown.
RESPONSE: Many of the issues associated with the proposed action and alternatives are interrelated, which makes the analysis of these issues and potential environmental impacts very complex. This issue will be addressed in the EIS.

§ 4.2.9 Downstream Aquatic Resources (Issue F)

COMMENT 76: Minnesota has aquatic resources of very high economic value to tourism and other uses, and one of the most extensive exotic species control programs in the nation. The issue of biota transfer of exotic species needs to be thoroughly analyzed in the EIS.

RESPONSE: This issue has been identified as one that will be addressed in the EIS. Any alternative that is selected must incorporate mitigation plans to avoid, minimize, or otherwise compensate for any adverse impacts created by inadvertent biota transfer resulting from the project. The nature of appropriate study approaches, potential economic and environmental impacts, and any post-construction monitoring will be determined in consultation with agencies with jurisdiction by law or expertise, as required by 40 CFR 1501.7, 1503.2 and 1503.3.

COMMENT 77: Specific biota transfer issues that need to be addressed include quality of existing documentation; habitat changes that could cause increased risk of biota transfer; Eurasian watermilfoil specifically; and habitat changes caused by water quality changes in the Red River and Devils Lake.

RESPONSE: Your suggestions have been noted. Biota transfer will be addressed in the EIS. The nature of appropriate study approaches, potential economic and environmental impacts, and any post-construction monitoring will be determined in consultation with agencies with jurisdiction by law or expertise, as required by 40 CFR 1501.7, 1503.2 and 1503.3.

COMMENT 78: The EIS needs to thoroughly review pathways, assess the functionality of new and existing pathways, examine which species might be problematic, and assess the influence of increased habitat diversity in Devils Lake.

RESPONSE: Biota transfer will be discussed in the EIS. The nature of appropriate study approaches, potential economic and environmental impacts, and any post-construction monitoring will be determined in consultation with agencies with jurisdiction by law or expertise, as required by 40 CFR 1501.7, 1503.2 and 1503.3.

COMMENT 79: The analysis of biota transfer should use a risk assessment framework.

RESPONSE: Biota transfer will be discussed in the EIS. The nature of appropriate study approaches, potential economic and environmental impacts, and any post-construction monitoring will be determined in consultation with agencies with jurisdiction by law or expertise, as required by 40 CFR 1501.7, 1503.2 and 1503.3.

COMMENT 80: The Corps should complete an analysis of the aquatic biology of the Sheyenne River, including prediction of impacts and monitoring of actual impacts resulting from the selected alternative.

RESPONSE: Analyses of the aquatic biology of the Sheyenne River will be included in the EIS, as stated in the draft Scoping Document.

COMMENT 81: This should be considered a "key issue", as assessment of biota transfer is critical to demonstrate that international obligations can be met.

RESPONSE: Biota transfer is included as a "key issue" (§ 4.1.7, under Other States and Nations, in the Scoping Document and above).

COMMENT 82: Conduct a comprehensive inventory of fish, zooplankton, phytoplankton, insect, and other species within Devils Lake, including fish pathogens and how these compare with existing species in the Red River basin.

RESPONSE: These studies are underway, and their results will be incorporated into the EIS.

COMMENT 83: Assess the consequences from biota transfer to the ecosystem and the economy of the Red River basin, including biology, commercial fish and fisheries, sport fish and fisheries, and endangered species.

RESPONSE: This issue will be addressed in the EIS.

COMMENT 84: The US has not been a good neighbor to Canada on this issue in the past. Water would have to be screened and treated to prevent biota transfer.

RESPONSE: The EIS and the required consultation with Canada will address the issue of biota transfer.

§ 4.2.10 Devils Lake Aquatic Resources (Issue E)

Most of the comments listed above under § 4.2.9 also addressed some aspect of Devils Lake aquatic resources as they relate to biota transfer. These comments are responded to above.

§ 4.3.2 Noise

COMMENT 85: The estimated noise level from the pumps should be determined and stated in the EIS.

RESPONSE: Noise will be discussed in the EIS.

§ 4.3.6 Inlet to Devils Lake

COMMENT 86: There should be a discussion about whether the State of North Dakota could convert the outlet to function as an inlet at some point in the future, and what would be required to make that conversion.

RESPONSE: This topic will be discussed in the EIS. But please note that the Corps is not authorized to study an inlet under the terms of P.L. 105-62.

COMMENT 87: We need an inlet from the McClusky Canal near the west end of Devils Lake to help stabilize the water level.

RESPONSE: P.L. 105-62 requires that "no funds made available under this Act or any other Act … may be used for the feasibility study authorized by P.L. 102-377 that addresses the need for stabilized lake levels through inlet controls, or … that would permit the transfer of water from the Missouri River Basin into Devils Lake". The Corps is not authorized to study an inlet. Therefore, as stated in the Scoping Document, this issue is outside the scope of the EIS.

COMMENT 88: Both an inlet and an outlet should be considered at the same time.

RESPONSE: P.L. 105-62 requires that "no funds made available under this Act or any other Act … may be used for the feasibility study authorized by P.L. 102-377 that addresses the need for stabilized lake levels through inlet controls, or … that would permit the transfer of water from the Missouri River Basin into Devils Lake". The Corps is not authorized to study an inlet. Therefore, as stated in the Scoping Document, this issue is outside the scope of the EIS.

COMMENT 89: P.L. 105-62 does not preclude the Corps from considering the possible cumulative environmental impacts posed by an inlet to Devils Lake, as is required by NEPA. Despite the spending limitation in the Act, an inlet is a "reasonably foreseeable" action under 40 CFR 1508.7 and must be considered.

RESPONSE: The Corps is responsible for determining what constitutes a "reasonably foreseeable action" under its normal planning process. While an inlet to Devils Lake has been discussed for years, either as part of Garrison Diversion or as a separate project, such an action remains controversial, unauthorized, and unfunded. As CEQ states in its 1997 guidance, "Considering Cumulative Effects under NEPA", "to include all proposals ever considered as other actions would most likely overestimate the future effects of cumulative effects" (p. 19) and therefore the analyst should develop scenarios that predict reasonably foreseeable future actions based on internal agency planning processes. This analysis, combined with the prohibition in P.L. 105-62, resulted in the statement in the draft Scoping Document that study of an inlet is outside the scope of this EIS. If the proposed outlet is constructed, its environmental effects would become part of the baseline for considering cumulative impacts for future projects, such as an inlet.

COMMENT 90: There will be times when water will be necessary for the stabilization of Devils Lake [and] a more certain supply can be obtained from the Missouri River.

RESPONSE: P.L. 105-62 requires that "no funds made available under this Act or any other Act … may be used for the feasibility study authorized by P.L. 102-377 that addresses the need for stabilized lake levels through inlet controls, or … that would permit the transfer of water from the Missouri River Basin into Devils Lake". The Corps is not authorized to study an inlet. Therefore, as stated in the Scoping Document, this issue is outside the scope of the EIS.

COMMENT 91: Long-term water management plans for North Dakota clearly involve an inlet to achieve water level stabilization in Devils Lake. The Scoping Document should therefore include either (1) identify other existing federal and state law that prohibits an inlet and is binding on future governments, or (2) expansion of the EIS to assess all downstream issues associated with combined operation of both the proposed outlet and any possible future inlet.

RESPONSE: While an inlet to Devils Lake has been discussed for years, either as part of Garrison Diversion or as a separate project, such an action remains controversial, unauthorized, and unfunded. As CEQ states in its 1997 guidance, "Considering Cumulative Effects under NEPA", "to include all proposals ever considered as other actions would most likely overestimate the future effects of cumulative effects" (p. 19) and therefore the analyst should develop scenarios that predict reasonably foreseeable future actions based on internal agency planning processes. This analysis, combined with the prohibition in P.L. 105-62, resulted in the statement in the draft Scoping Document that study of an inlet is outside the scope of this EIS. If the proposed outlet is constructed, its environmental effects would become part of the baseline for considering cumulative impacts for future projects, such as an inlet.

COMMENT 92: An inlet to Devils Lake is a connected as well as a cumulative action that must be considered and adequately addressed in this EIS in order to be in compliance with NEPA.

RESPONSE: While an inlet to Devils Lake has been discussed for years, either as part of Garrison Diversion or as a separate project, such an action remains controversial, unauthorized, and unfunded. As CEQ states in its 1997 guidance, "Considering Cumulative Effects under NEPA", "to include all proposals ever considered as other actions would most likely overestimate the future effects of cumulative effects" (p. 19) and therefore the analyst should develop scenarios that predict reasonably foreseeable future actions based on internal agency planning processes. This analysis, combined with the prohibition in P.L. 105-62, resulted in the statement in the draft Scoping Document that study of an inlet is outside the scope of this EIS. If the proposed outlet is constructed, its environmental effects would become part of the baseline for considering cumulative impacts for future projects, such as an inlet.

COMMENT 93: Several of the issues identified in the draft Scoping Document, such as Water Quantity in Devils Lake, Water Users/Water supply, Downstream Erosion and Sedimentation, Groundwater, and Downstream Agriculture, include aspects which definitely relate to a potential inlet.

RESPONSE: You are correct that these issues would be related to an inlet if an inlet were being proposed. As CEQ states in its 1997 guidance, "Considering Cumulative Effects under NEPA", "to

include all proposals ever considered as other actions would most likely overestimate the future effects of cumulative effects" (p. 19) and therefore the analyst should develop scenarios that predict reasonably foreseeable future actions based on internal agency planning processes. This analysis, combined with the prohibition in P.L. 105-62, resulted in the statement in the draft Scoping Document that study of an inlet is outside the scope of this EIS. If the proposed outlet is constructed, its environmental effects, including effects on the issues you raise, would become part of the baseline for considering cumulative impacts for future projects, such as an inlet.

Additional Issues Identified by Commenters

COMMENT 94: The social impact assessment should consider both the positive and the negative impacts (direct and indirect) from the emergency outlet as compared to other alternatives on the communities of Devils Lake and the Sprit Lake Nation, as well as other communities along the Sheyenne River and in the Red River Basin. This assessment should also examine whether there are disproportionate impacts to low-income and/or minority communities from current management practices related to wetlands and flood control when coupled with the proposed emergency outlet.

RESPONSE: The EIS will contain a social impact assessment covering expected impacts to communities, and an Environmental Justice analysis as required by Executive Order 12898.

5.0 Public Involvement Program

COMMENT 95: Despite formal expressions of interest in this project, Missouri was not allowed the opportunity to participate in any agency scoping meetings. The Missouri Department of Natural Resources also was not notified of the public meetings held during the week of March 23, 1998, and therefore was not able to participate.

RESPONSE: Missouri has participated in the public scoping process as well as in agency meetings. The Missouri DNR was on the mailing list and was sent a copy of the newsletter announcing the March 1998 scoping meetings. The Missouri DNR, Department of Conservation, and Attorney General's office were also sent copies of the draft Scoping Document and they provided comments. In addition, the State of Missouri was represented at the May 5, 1998 agency meeting in St. Paul, MN.

COMMENT 96: [We] oppose the scoping process for the Western Devils Lake Emergency Outlet Study.

RESPONSE: The scoping process is guided by the requirements of 40 CFR 1501.7 and other CEQ and Corps guidance. Agencies have wide discretion in the specific actions they take during scoping, so long as the objectives are met.

COMMENT 97: Please explain what a "nominal group process" [as used at agency meetings] is and how it works.

RESPONSE: Nominal group process is a method of ensuring that all meeting participants are heard and is used to collect the maximum ideas in minimal time. Combined with a variation on a technique called "100 Votes", it enables groups to elicit issues and rank them quickly. As used during interagency and public meetings, numerous issues drawn from prior studies, meetings, and internal Corps expertise were identified and listed. Meeting participants then could add to the lists, which were posted around the room or displayed on "issue ranking sheets" at the public meetings. Each participant then identified their top 5 priorities, their next five, and so on by allocating colored stick-on dots (at the agency meetings) or checkmarks (at the public meetings) accordingly.

COMMENT 98: A new Section 5.7, Virtual Flood Computer Simulation, should be added to the Scoping Document. The EIS should discuss the results of the workshop held in Grand Forks 3/11/98 and should use this type of simulation to analyze alternatives for the EIS.

RESPONSE: The Virtual Flood Computer Simulation workshop was not part of the Public Involvement or scoping process for this EIS, but was a demonstration of potentially useful technology as applied to Devils Lake as a case study. Data used to prepare the Virtual Flood exercise will be used in the EIS analysis.

COMMENT 99: Previous comments submitted by US EPA on December 5, 1997 and by Canada on December 22, 1997 in response to the Notice of Intent published in the Federal Register October 21, 1997 were not included in the draft Scoping Document.

RESPONSE: We apologize for this oversight. Only letters submitted in response to the scoping meetings were reproduced in the draft Scoping Document. Both of the letters are included in this Scoping Document, Volume II, and responses are provided throughout this section, as appropriate.

COMMENT 100: Please provide justification for not re-scoping the public for input on upper basin management and including that input in an amended scoping document.

RESPONSE: As stated in § 3.3 of the Scoping Document, upper basin management is one of the alternatives to be evaluated in the EIS. We do not believe further scoping is necessary at this time, as this issue has already been identified as required by 40 CFR 1501.7. Upper basin management is included as an alternative or component of alternatives. It is not a resource that would be impacted by the construction or operation of an outlet.

ATTACHMENT A

REPRESENTATIVE PUBLIC SCOPING MEETING COMMENTS

Representative Public Scoping Meeting Comments

The following represents some of the major questions and comments that were expressed at the scoping meetings, by meeting location:

VALLEY CITY

- Who pays for the operation and maintenance of the outlet?
- Is the proposal for 200 or 300 cfs of discharge? Why was the discharge increased?
- Why not consider winter operation of the outlet since that may reduce erosion and add flow to the river during low flow period?
- If the outlet is built, can it be used as an inlet?
- What is the long-term plan for outlet operation?
- What will the operation triggers be? Who sets these triggers?
- How does the NDSWC channel capacity analysis deal with opposite banks that are at different elevations? If you determine capacity based on the higher side on the average, the lower side will flood out.
- What is the cost of the outlet as compared to damage caused by water level rise in Devils Lake? What is benefit-cost ratio?
- Who addresses problems if Devils Lake overflows naturally?
- How much will the outlet lower Devils Lake?
- With all actions in place and continued lake rise, when would a control structure on Tolna Coulee be considered?
- What about cumulative impacts? A Baldhill Dam height increase and more flow downstream of Valley City was cited. What about Garrison Diversion and Tri-County projects?
- What about cultural resources along the Sheyenne River? How do you deal with these within the proposed construction and NEPA schedule?
- What about outleting to the James River?
- How does the project schedule fit with the NEPA process?
- What are the downstream impacts?
- How will impacts affect the fish hatchery?
- How will downstream water quality be impacted?

LISBON

- What is elevation at which outlet water will enter the Sheyenne River?
- How high is Devils Lake now?
- How big will the outlet pipe(s) be?
- Summer operation may cause more erosion. Winter operation might be better to reduce erosion and add water during low-flow period.
- Baldhill Dam causes erosion, the water is let out too fast.
- Can this project start without approval from Canada?
- What is the maximum rate at which water will be pumped out of Devils Lake?
- How much will the water level rise downstream in the Sheyenne River?

- How is channel capacity determined, is the average or low elevation of banks used in the evaluation?
- What does "bank full" mean?
- What is average flow at Kindred?
- How many acre-feet of water is there in Devils Lake at different elevations?
- There will be groundwater problem four to five miles away from the river.
- Can the additional water be used by landowners, or manufacturing and industry? Can more water be pumped out of Devils Lake for downstream use?
- Can the outlet be shut down during rainstorms?
- Is there authority for clearing and snagging?
- Will there be funds available to fix erosion caused by the project?
- Is the outlet to the Goose River still active?
- If the outlet is built and the lake keeps rising, then what?
- What are the operation costs and who pays them?

COOPERSTOWN

- How will farmland be protected if the water level rises up to two feet in the river?
- Will the Corps look at economics? What about the effect on water treatment plants and costs related to plant upgrades to deal with water quality impacts?
- What about livestock watering and potential impacts?
- How will the fish hatchery be impacted?
- What do Canada and Minnesota say regarding biota transfer and water quality?
- What are the potential impacts to groundwater?
- Who pays for mitigation and monitoring and how is this cost figured in the economic analysis?
- If the outlet is built and Devils Lake continues to rise when will it overflow naturally? What is the probability of this occurring? If lake overflows naturally, how does this affect treaty with Canada?
- What about the natural overflow into Stump Lake. How much sediment is in Tolna Coulee? Why is the Tolna Coulee overflow elevation at 1459 now when it was 1457 last year? Will the sediment wash out of the Tolna Coulee?
- Why weren't the James or Missouri Rivers considered as receiving waters as opposed to the Sheyenne River?

FORT TOTTEN

- Does the Corps have authorization to construct the outlet without Spirit Lake Nation approval?
- Where do water users and water quality in the City of Devils Lake fit in? Under what issue on the prioritization sheet do these issues fall?
- How will cultural resources be addressed?
- Will a meeting with the Spirit Lake Nation be set up? Will such a meeting include reservation members or just the council?
- Will the report to Congress recommend the outlet even if there is tribal opposition?

- How do farmers downstream feel about the project?
- There are concerns about homes on the south side at the lake also.
- Some farmers rent tribal land. When it gets flooded will they be compensated? If so, how?
- Is it true that if water is on my land it belongs to the state? Who owns the land?
- What are operational costs? Can these cost be reduced by flushing water into Stump Lake first? Why not wait with outlet until the water moves into Stump Lake to save money?
- How long will it take to complete the EIS? Is the Corps going to ask for emergency (expedited) EIS from CEQ?
- Is environmental acceptability determined before the EIS is completed? Isn't that the purpose of NEPA?

DEVILS LAKE

- What is the time frame for construction and operation?
- There are more meetings held in downstream towns than at the lake, will this affect the results?
- Why is Devils Lake water treated like a toxic waste?
- The natural outlet to the Sheyenne River is at 1459. We have to get rid of water before that elevation is reached. When water overflows into Stump Lake, water quality in Stump Lake will improve and allow for an outlet from Stump Lake. Something should have been done sooner. An outlet from Stump Lake should be considered, water from the lake will be diluted by river water.
- Recreation on Lake Ashtabula is important, but what about the upper basin flood damages? A 2002 time frame is not acceptable. Farms in the upper basin are going under water. People in the upper basin are being ignored, they still need to make a living. This needs to be addressed.
- What is the target level for Devils Lake?
- No consideration has been given to upstream upper basin impacts.
- When water reaches 1459, downstream waters will have to accept it, why is there a water quality problem.
- Why are we forgetting about people and seem more concerned about biology and foreign nations?
- Fix the problem no matter what it impacts.
- Stabilization of Devils Lake will require both an inlet and an outlet.
- How much sediment is in Tolna Coulee?
- When did water last flow through Tolna Coulee?
- Upper basin lakes have also increased in size-include acreage data in reports.
- Why did Tolna Coulee outlet elevation change from 1457 to 1459?
- Why go out east end, can't keep building dikes to save the town, they will wash out.
- Who do we contact to get the job done?
- If the lake overflows naturally, does NEPA have to be followed?
- Would the Corps put a structure in if the lake overflowed naturally? How long would that take?
- The situation at Devils Lake is an emergency, but the outlet is not considered an emergency solution? Who determines what constitutes an emergency?

- What are illegal drains in the upper basin? How many are there?
- What would the Corps propose for the upper basin strategy? Was 75,000 acre-feet a goal?
- Who pays for operation of the outlet?
- Are past damages included in the economic evaluation?
- What about the loss of homes, homes being moved to different areas, and tax base?
- An east end outlet and an inlet is the best solution, but understand that downstream interests have concerns that have to be recognized.

GRAND FORKS

- Will there be an EIS for this project?
- How was this meeting advertised? It seems like low attendance.
- What will the water quality changes be at Grand Forks?
- What kinds of changes will occur on the Sheyenne and Red Rivers?
- Will there be corrective action if Canada finds violations?
- Is the outlet on the west due to better water quality?
- Will the EIS include an inlet?
- How will the other actions i.e. Garrison Diversion, etc. be addressed?
- Will the project cause flooding?
- What about upper basin storage? There is more flow at Minnewaukan in the last three years. All of this water can't be stored before reaching Devils Lake.
- Baldhill Dam is being repaired and upgraded to store more water. What is purpose of the dam? Can the Counties pay for storage and protect Grand Forks by raising Baldhill Dam five feet?
- Is this a study with a resulting plan?
- Is the Stump Lake to Lake Lorraine to Forest River outlet being considered?
- If Devils Lake naturally overflows to Sheyenne River, biota transfer and water quality is a mute point.
- What about outlet to James River?
- Who pays for outlet, studies, roads, etc?

FARGO

- How much will the river go up with the outlet?
- Will the river stay within it banks?
- Have you considered the effect of rockets on the weather, and resultant flooding?
- If an uncontrolled discharge occurred through the natural outlet, what would the inflow to the Sheyenne and Red Rivers be?
- At the current rate of rise, when would the breakout occur?
- How long will it take to build the outlet? How much will it reduce the rise of water in Devils Lake during that same period?
- What is the drawdown elevation?
- Is this an emergency? Is the Corps overriding any procedures?

- Natural breakout may not occur now, but may be a real issue in the future. Should look at structure on Tolna Coulee now.
- How will virtual flood information be used in this study?
- Moorhead Mayor stated that quantity of water is important. The outlet could supplement long-term water supply. Can Moorhead get access to the Devils Lake water for industrial use and adequate flow during drought? He received a letter this morning from four Minnesota agencies and the Mayor wanted to state that the letter does not reflect the opinions of Moorhead or the Red River Basin Board. The letter opposes the outlet and states that it is not an emergency.
- If outlet damages people along the river will there be compensation?
- With the no action alternative, will road raises etc. be done in the future? How far into the future?
- Water quantity is a problem, more water at Harwood is causing problems. Other actions, not just the outlet need to be considered. Is compensation for other damages included in the study (i.e., Baldhill Dam, Maple River Dam, levees).

ATTACHMENT B

LIST OF PUBLIC SCOPING MEETING WRITTEN COMMENTERS
(Written comments were included in Volume II of the draft Scoping Document, June 1998, but are not reproduced in this Scoping Document.)

List of Public Scoping Document Written Commenters

(Written comments were reproduced in Volume II of the draft Scoping Document, June 1998.)

A. Gene Loge
B. D. Nathan Lunde
C. Sherry Shadley
D. anonymous issue sheet
E. anonymous issue sheet
F. anonymous issue sheet
G. Mike Mahoney
H. Benjamin Bernard
I. John Kwapinski - Ft. Ransom State Park
J. Ken Solberg - State Senator
K. anonymous issue sheet
L. anonymous issue sheet
M. anonymous issue sheet
N. anonymous issue sheet
O. Peterson Coulee Outlet Association (counted as #19 below)
P. FORWARD Devils Lake Development Corp. (counted as #24 below)

List of Written Commenters Submitting after the Public Meetings

(Written comments are reproduced in Volume II of the draft Scoping Document, June 1998, but are not included in this Scoping Document.)

1. Milo Buchholz
2. Dakota Prairie Audubon Society (including addendum)
3. Minnesota Department of Natural Resources, Pollution Control Agency, Department of Health, and Board of Water and Soil Resources (joint letter)
4. Mike Smylie
5. Devils Lake Area Chamber of Commerce
6. East Grand Forks Water and Light Department
7. Keith and Darlene Forde
8. City of Grand Forks
9. Devils Lake Basin Joint Water Resource Board
10. Attorney General of Missouri
11. Missouri Department of Natural Resources
12. U.S. Fish and Wildlife Service
13. Bonnie Alexander
14. Rick LaFleur
15. Dwight Haas
16. Ramsey County Water Resource District
17. National Audubon Society
18. Peterson Coulee Outlet Association
19. Red River Basin Board
20. Dan Alfstad
21. People to Save the Sheyenne
22. Leo Bittner
23. FORWARD Devils Lake Development Corp. (attachments not reproduced)
24. Spirit Lake Tribe
25. Garrison Diversion Conservancy District
26. Missouri Department of Conservation
27. Upper Mississippi River Basin Association
28. Glen and Lois Kirk

ATTACHMENT C

LIST OF DRAFT SCOPING DOCUMENT WRITTEN COMMENTERS
(Letters of comments are reproduced in Volume II of this document.)

LIST OF DRAFT SCOPING DOCUMENT WRITTEN COMMENTERS
(Letters of comments are reproduced in Volume II of this document)

1. Milton Sauer-No Date
2. United States Environmental Protection Agency-July 31
3. Minnesota Historical Society-August 3
4. Paul E. Wood-August 5
5. Transboundary Waters Unit, Environment Canada-August 7
6. Gordon Berg-August 15
7. North Dakota Game and Fish Department-August 17
8. Ardon Hermon-August 23
9. National Audubon Society-August 24
10. United States Department of Agriculture, natural Resource Conservation Service-August 25
11. Attorney General of Missouri-August 26
12. Devils Lake Basin Manager-August 26
13. Public Service Commission, North Dakota-August 26
14. United States Department of the Interior, Fish and Wildlife Service-August 26
15. North Dakota State Water Commission-August 26
16. Minnesota Department of Natural Resources-August 27
17. Peterson Coulee Outlet Association-August 27
18. Environment Canada, Transboundary Waters Unit-August 27
19. Missouri Department of Natural Resources-August 28
20. James V. Fenelon, Ph.D., John Carroll University-September 14
21. Spirit Lake Tribe-September 25
22. Mni Sose Intertribal Water Rights Coalition, Inc.-September 30